

CCRB INVESTIGATIVE RECOMMENDATION

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|---|--|-------------------------------|---|---|---------------------------------|
| Investigator: Allison Griebie | Team: Team # 7 | CCRB Case #: 200403093 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Wednesday, 03/31/2004 8:40 PM | Location of Incident: 125th Street entrance to the Westside Highway | Precinct: 26 | 18 Mo. SOL 9/30/2005 | EO SOL 9/30/2005 | |
| Date/Time CV Reported Tue, 04/06/2004 1:14 PM | CV Reported At: Precinct | How CV Reported: In-person | Date/Time Received at CCRB Tue, 04/06/2004 1:14 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|--------------------------|--------|--------|---------|
| 1. POM Kevin Blake | 02740 | 929739 | PBMN TF |
| 2. POM Brian Mccaughey | 22708 | 930686 | PBMN TF |
| 3. SGT Gregory Pekera | 04870 | 919546 | PBMN TF |
| 4. SGT Christop Flanagan | 01477 | 920288 | PBMN TF |
| 5. Officers | | | |
| 6. An officer | | | |

| Officer(s) | Allegation | Investigator Recommendation |
|-------------------------|--|-----------------------------|
| A.SGT Gregory Pekera | Abuse: Sgt. Gregory Pekera stopped § 87(2)(b)'s vehicle. | |
| B.SGT Christop Flanagan | Discourtesy: Sgt. Flanagan spoke obscenely and rudely to § 87(2)(b) | |
| C.SGT Gregory Pekera | Force: Sgt. Gregory Pekera used physical force against § 87(2)(b) | |
| D.SGT Gregory Pekera | Abuse: Sgt. Gregory Pekera authorized the search of § 87(2)(b) | |
| E.POM Kevin Blake | Abuse: PO Kevin Blake searched § 87(2)(b) | |
| F.POM Brian Mccaughey | Abuse: PO Brian McCaughey searched § 87(2)(b) | |
| G.POM Kevin Blake | Force: PO Kevin Blake used physical force against § 87(2)(b) | |
| H. An officer | Force: An officer used physical force against § 87(2)(b) | |
| I.SGT Gregory Pekera | Abuse: Sgt. Gregory Pekera authorized and searched § 87(2)(b)'s vehicle. | |
| J. Officers | Abuse: Officers damaged § 87(2)(b)'s property. | |

Synopsis

The Civilian Complaint Review Board received § 87(2)(b)'s complaint on April 6, 2004. § 87(2)(b) reported the complaint at the 26th Precinct on April 5, 2004. § 87(2)(b)'s vehicle was stopped on March 31, 2004 in the vicinity of 125th Street and the West Side Highway in Manhattan. § 87(2)(b) alleged that he was stopped for no reason (allegation A) and that an officer spoke discourteously toward him (allegation B). § 87(2)(b) alleged that Sgt. Gregory Pekera, of the Patrol Boro Manhattan North Task Force, used physical force to pull § 87(2)(b) out of his vehicle during the stop (allegation C). § 87(2)(b) also alleged that PO Kevin Blake searched him and that PO Blake and PO Brian McCaughey searched the § 87(2)(b)'s passenger, § 87(2)(b) (allegation D, E and F). § 87(2)(b) alleged that PO Blake slapped him twice (allegation G) and that another officer punched him in the stomach as he was entering the police van (allegation H). § 87(2)(b) alleged that the officers searched and damaged his vehicle (allegation I and J).

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) *written statement on April 5, 2004*

§ 87(2)(b) stated that he was pulled over by police officers in a police van from the 26th Precinct. When § 87(2)(b) provided his identification and vehicle paperwork two officers opened the front and rear passenger side doors and asked § 87(2)(b) what was in the vehicle. § 87(2)(b) replied, "nothing" and he asked why he was stopped. A heavysset officer with a receding hairline replied, "because you look like a gangster." The officer then opened the driver's side door and pulled § 87(2)(b) out of the car and slammed him against the car. The officers on the passenger side did the same to the passenger, § 87(2)(b). The officers handcuffed § 87(2)(b) and then started to search his vehicle. § 87(2)(b) told the officers they did not have permission to search his car and the heavysset officer stated, "shut the fuck up, it's my car now." This officer took § 87(2)(b) toward the rear of the police van and repeatedly smacked him in the face and punched him in the stomach. § 87(2)(b) was put in the police van and the officers continued to search his car. The officers ripped out the backseat, tore out the alarm system, cut the carpet, destroyed packages, tore out his stereo system, broke his power window controls, searched the trunk, opened the hood and stomped on the rear bumper causing it to crack in several places.

§ 87(2)(b) *CCRB statement on June 29, 2004*

On March 31, 2004 at 8:40PM § 87(2)(b) was driving his 1993 Gold 4Door Acura and he picked up his friend, § 87(2)(b) at Madison Avenue and 125th Street in Manhattan. § 87(2)(b) was driving westbound on 125th Street and he was about to make a left turn onto the West Side Highway at a stoplight. He saw a police van heading eastbound on 125th Street and when the van drove by him the officers looked at him and they made eye contact. As § 87(2)(b) turned left he looked out his rear view mirror and saw the police van make a U-turn. The van pulled up behind § 87(2)(b)'s vehicle and signaled its lights and § 87(2)(b) pulled his vehicle over. § 87(2)(b)

§ 87(2)(b) stated he did not know why he was being stopped. He did not make any movements as he was driving and was not smoking or drinking.

Four officers approached § 87(2)(b)'s vehicle and he rolled down his window. The officer who approached the driver's side, PO 1, asked for his license and registration. As § 87(2)(b) provided his paperwork he saw the officer who approached his passenger side, PO 2, open the front passenger side door where § 87(2)(b) was located. § 87(2)(b) asked PO 2 to close the door and PO 2 said, "why? What do you have in the car?" § 87(2)(b) replied, "nothing." PO 2 shined his flashlight into the car and said, "what's in the boxes?" § 87(2)(b) responded, "close my door please." PO 2 said, "why? What's in the boxes?" § 87(2)(b) said, "they are packages I am shipping. What am I being pulled over for anyway?" PO 2 replied, "well look at you. You look like a gangster. Try to wear a suit and maybe you won't get pulled over." § 87(2)(b) said, "do what you have to do and let me get out of here." PO 1 opened § 87(2)(b)'s door and said, "it's my car now," and pulled him out of the car.¹ PO 4 came to assist and they put § 87(2)(b)'s arms behind his back, cuffed him and put him up against the car. PO 1 and PO 4 searched § 87(2)(b). The officers took off § 87(2)(b) hat, searched inside the pockets of his jacket and jeans and patted down to his shoes. The officers took out his wallet but did not find anything else. As soon as § 87(2)(b) was removed from the car § 87(2)(b) also had to exit the vehicle. PO 2 and PO Blake searched § 87(2)(b) as he was up against the car on the passenger side. § 87(2)(b) stated that § 87(2)(b) was not cuffed.

§ 87(2)(b) says to PO Blake again, "Why are you doing this?" PO Blake replies, "shut up" and § 87(2)(b) stated, "you shut up." PO Blake slapped § 87(2)(b) with an open palm on his left cheek. § 87(2)(b) was shocked and stumbled back and stated to PO Blake, "you are a coward. You are going to hit me with my handcuffs on?" PO Blake smacked § 87(2)(b) again. PO Blake and PO 3 escorted § 87(2)(b) directly to the van and told him to get in the van. PO 3 punched § 87(2)(b) in the side as he entered the police van. § 87(2)(b) did not respond to the punch but he stated that it hurt more than the slaps from PO Blake. As § 87(2)(b) was sitting in the van he saw all the other officers searching his vehicle using their flashlights. They open and search through all the doors, pulled out the back seat, opened the trunk and the hood. § 87(2)(b) said to PO Blake inside the van, "this is ridiculous, you are all wasting your time." § 87(2)(b) stated that PO Blake said, "we are from the Upper East Side, 32nd Precinct, and we never get action like this on the East Side. The most action we get is someone smoking a pipe." One of the other officers came to the van and sat with § 87(2)(b) and PO Blake. PO 1 came to the police van to get a box cutter and then continued to go through the entire vehicle and removed everything from the trunk, such as clothes, sneakers and a spare tire. § 87(2)(b) was standing about 10-15 feet away from the vehicle on the passenger side and one of the officers from the van was standing by him. § 87(2)(b) said he had packages to be shipped by mail in his backseat.

After about 15 minutes of searching, the officers did not find anything in § 87(2)(b)'s vehicle and they came back to the van. The officers asked § 87(2)(b) if he had any warrants and he said, "no." The officers found that § 87(2)(b) had two warrants. The officers gave § 87(2)(b) the keys to the vehicle and told him that his friend was under arrest and being taken to the precinct. § 87(2)(b) drove the car away from the incident. While being transported to the precinct, PO 1 said to § 87(2)(b) "have you ever been arrested before? Because look at you. You look like a gangster."

§ 87(2)(b) was charged with § 87(2)(a) 160.50, which was dismissed on § 87(2)(b). When § 87(2)(b) saw his car after the incident he observed that panels were torn off, carpet had been cut and the steering wheel column had been taken out. All of the compartments were open. He noticed that his backpack had been opened and searched. § 87(2)(b) had two packages of CDs in his backseat that he was going to mail and these packages were cut open. (See Photos, Encl. 11a-11i)²

§ 87(2)(b) described PO Blake as white male, clean cut, 5'9" tall, brown eyes, brown hair, early 30s and in uniform. He identified PO Blake by his badge. § 87(2)(b) described PO 1

¹ § 87(2)(b) failed to mention that the officer stated, "shut the fuck up" when the officer said, "it's my car now", as alleged in his written statement.

² § 87(2)(g)

as a white male, heavyset, 5'9" tall, 220lbs, balding with a receding hairline, mid 20's and in uniform. He described PO 2 as a white male, 25 years old, wearing glasses, clean cut and in uniform. PO 3 was also a white male, muscular, spiked hair, mid 20s and in uniform. § 87(2)(b) cannot remember the description of PO 4.

Photo Presentation

A photo array was conducted on January 19, 2005. According to the officers' statements, Sgt. Flanagan, Sgt. Pekera, PO Blake and PO McCaughey were working together when § 87(2)(b) was stopped. § 87(2)(b) was shown photos of these officers. He positively identified PO Blake as the officer who searched him and slapped him twice. § 87(2)(b) did not recognize Sgt. Pekera. § 87(2)(b) identified PO McCaughey as the officer who was wearing glasses, which was PO 2. § 87(2)(b) was 65% sure this officer opened the passenger side door and looked in the vehicle with his flashlight. He alleged that this officer searched his vehicle. § 87(2)(b) was 50% certain that Sgt. Flanagan was the officer who pulled him out of the car, called him a "gangster" and searched him. § 87(2)(b) could not identify the officer who punched him as he was entering the police van.

Results of Investigation

§ 87(2)(b) provided a contact number for § 87(2)(b) however he could not provide any additional information. The CCRB attempted to contact § 87(2)(b) but the number provided was not § 87(2)(b)'s number. The CCRB made several other attempts, including a search in BADS, Metro Search, the white pages and DMV, to locate § 87(2)(b) however all results were negative.

Officer Statements

On March 31, 2004 Sgt. Gregory Pekera, Sgt. Christopher Flanagan, PO Brian McCaughey, PO Kevin Blake and PO Brian McSweeney were assigned to the Manhattan North Task Force. They were assigned to the Impact Task Force Patrol covering the 26th Precinct and their responsibilities included independent patrol, summons enforcement, car stops and arrests. They do not answer 911 calls unless assistance is needed. They were all working in uniform and assigned to a marked police van, RMP # 5854. Sgt. Pekera, Sgt. Flanagan and PO Blake did not document this incident in their memo books.

Sgt. Pekera's CCRB Statement on October 28, 2004

Sgt. Pekera stated that he observed § 87(2)(b)'s vehicle heading west on 125th Street and turn toward the West Side Highway heading southbound. Sgt. Pekera was driving the police van directly behind § 87(2)(b)'s car. § 87(2)(b) did not use a turn signal when he turned left and Sgt. Pekera observed that the tint of his windows might have been illegal. Sgt. Pekera stopped the vehicle to conduct a routine traffic stop. Sgt. Pekera approached the vehicle on the driver's side and PO Blake approached the passenger side while PO McCaughey took a support position between § 87(2)(b)'s vehicle and the police van. § 87(2)(b) rolled down his window and the passenger window and Sgt. Pekera explained to § 87(2)(b) why he was stopped and asked for his license and registration. Sgt. Pekera stated that he could smell marijuana emanating from the vehicle. Sgt. Pekera looked inside the vehicle for about 10 to 15 seconds while § 87(2)(b) was looking for his information. Sgt. Pekera noticed a passenger in the passenger seat and Sgt. Pekera observed a brown wrapper in the front middle ashtray, which looked like a marijuana cigarette. Sgt. Pekera instructed § 87(2)(b) to exit the vehicle and § 87(2)(b) complied. PO Blake instructed the passenger to exit and the passenger complied.

Sgt. Pekera and § 87(2)(b) walked to the rear of the vehicle and § 87(2)(b) was facing the vehicle with his hands up on the vehicle and Sgt. Pekera stood behind him. PO Blake reached into the vehicle to retrieve the marijuana cigarette. At this point, § 87(2)(b) threw his elbows back, broke away from Sgt. Pekera and ran toward the driver's side of his car. He went headfirst into the vehicle. Sgt. Pekera was concerned for PO Blake's safety and was suspicious that § 87(2)(b) had a weapon in the car because of this aggressive movement. Sgt. Pekera immediately

grabbed § 87(2)(b)'s jacket and pulled him out of the vehicle. Sgt. Pekera stated that PO Blake exited the vehicle and assisted him in handcuffing § 87(2)(b).

Sgt. Pekera stated that § 87(2)(b) was taken to the police van and PO Blake searched him outside of the police van while Sgt. Pekera started to search the vehicle. Sgt. Pekera stated that he searched the vehicle for weapons and narcotics. Sgt. Pekera searched the entire vehicle including the glove box, ashtrays, under all seats and the trunk. Sgt. Pekera stated that the car was full of boxes, papers and CDs. Sgt. Pekera stated that PO McCaughey was the only officer who assisted with the vehicle search. Sgt. Pekera did not open the hood of the car. Sgt. Pekera did not remove the steering column or any wires and he did not cut the carpet. Sgt. Pekera stated that PO McCaughey actually removed the marijuana cigarette from the vehicle, which is consistent with PO McCaughey's statement.

The passenger stood outside of the car and was calm and compliant throughout the incident. The car was released to the passenger. Sgt. Pekera stated that § 87(2)(b) was not issued a summons for the traffic infractions because resisting arrest, possession of marijuana and the active warrant was more serious. Sgt. Pekera stated that on the way back to the precinct § 87(2)(b) stated, "how much do you think I can get from this lawsuit?"

PO McCaughey's Statements

Memo Book Entry

PO McCaughey documented in his memo book that the car stop was conducted at 2100 hours. The stop occurred at 125th Street and 12th Avenue and the vehicle had South Carolina plates, § 87(2)(b). The car had tinted windows and made an unsafe lane change westbound on 125th Street between Broadway and Amsterdam. The driver, § 87(2)(b) is wanted on an active warrant. The car is 1993 Acura Legend (VIN § 87(2)(b)). PO McCaughey documented that a smell of marijuana emanated from the car and one cigar was seen in the ashtray with alleged marijuana. At 2100 hours an arrest was made. When the sergeant told § 87(2)(b) that he was under arrest he reached in to the car, got stiff and refused to be cuffed by the sergeant and PO McCaughey. At 2120 hours the officers went back to the 26th Precinct and at 2140 hours he processed the arrest paperwork including two vouchers.

Complaint Report

§ 87(2)(a) 160.50
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The report was prepared by PO McCaughey and approved by Sgt. Pekera.

Arrest Report

§ 87(2)(a) 160.50
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The report stated that physical force was used to restrain/control/remove § 87(2)(b). The arrest report was prepared by PO McCaughey and approved by Sgt. Flanagan.

Property Vouchers

PO McCaughey prepared a voucher for one cigar containing alleged marijuana, which was recovered from § 87(2)(b)'s vehicle. The voucher listed items such as CD cases, a Sony tape recorder, a mini wire microphone and batteries. These items were recovered from the defendant's person.

Criminal Court Report

§ 87(2)(a) 160.50
[REDACTED]
[REDACTED]

PO McCaughey's CCRB Statement on August 4, 2004

PO McCaughey was located in one of the back passenger seats of the van and he stated that Sgt. Pekera was driving the van. He observed § 87(2)(b)'s car on 125th Street between Amsterdam and Broadway. PO McCaughey stated that § 87(2)(b) was driving erratically by moving between the lanes and the windows were illegally tinted so the officers conducted a routine traffic stop. PO McCaughey approached the vehicle, along with Sgt. Pekera and PO Blake, and stood between § 87(2)(b)'s vehicle and the police van. PO McCaughey could not see inside the vehicle but he could smell marijuana when § 87(2)(b) rolled down his window. PO McCaughey stated that Sgt. Pekera instructed § 87(2)(b) and the passenger to exit the vehicle and both complied. PO McCaughey observed § 87(2)(b) aggressively reenter the vehicle as discussed by Sgt. Pekera. PO McCaughey stated that he assisted Sgt. Pekera in grabbing § 87(2)(b)'s jacket to pull him out of the car and that § 87(2)(b) was resisting arrest by twisting his arms. PO McCaughey stated that he and Sgt. Pekera put § 87(2)(b) against the car with § 87(2)(b)'s hands behind his back and they were able to handcuff § 87(2)(b).

PO McCaughey stated that PO Blake informed him of the marijuana cigarette and PO McCaughey went to the vehicle and retrieved it from the middle ashtray. PO McCaughey also checked all of the ashtrays in the car including the ashtrays in the back of the vehicle. PO McCaughey went back to the police van and heard § 87(2)(b) say to PO Blake, "why don't you like black people?" § 87(2)(b) also told PO Blake to hit him so he could sue the city. PO Blake responded by telling § 87(2)(b) to relax. PO McCaughey stated that he assisted PO Blake in placing § 87(2)(b) in the van and there was not struggle. PO McCaughey stated that § 87(2)(b) asked PO Blake to hit him so he could sue and get money from it. PO Blake replied by telling § 87(2)(b) to relax.

PO Blake's CCRB Statement on July 30, 2004

PO Blake stated that he was located in the middle of the first passenger seat in the van and he observed § 87(2)(b)'s vehicle at 125th Street and Broadway and the officers followed the vehicle for about one minute. PO Blake stated that the vehicle had illegal, dark, tinted windows and the driver failed to use a turn signal when making a left turn at a stop light onto the West Side Highway. PO Blake approached the passenger side and Sgt. Pekera approached the driver's side of the vehicle. PO Blake shined his flashlight through the passenger window and saw the passenger. He told the passenger through the window to keep his hands on his lap and PO Blake observed the passenger comply. § 87(2)(b) rolled down the driver's side window and the passenger side window and PO Blake stated that he could smell marijuana emanating from the vehicle. PO Blake observed a marijuana cigarette in the front middle ashtray. PO Blake stated that Sgt. Pekera was in control of the stop and so he waited to take orders from Sgt. Pekera about how to proceed with the stop. PO Blake stated that Sgt. Pekera instructed § 87(2)(b) to exit the car and so PO Blake instructed the passenger to exit the car and both complied.

PO Blake stated that he reached into the car to retrieve the evidence and as he had one knee on the passenger seat, § 87(2)(b) aggressively entered the vehicle headfirst, leaning his torso into the vehicle. PO Blake stated that § 87(2)(b) fought hard when Sgt. Pekera grabbed him. He stated that § 87(2)(b) was elbowing, twisting his torso and yelling, "get off me, you can't search my car." PO Blake stated that the other officers assisted in handcuffing § 87(2)(b) and by the time he ran around the vehicle to assist, § 87(2)(b) was already in handcuffs and the struggle was over. PO Blake stated that Sgt. Pekera instructed him to take § 87(2)(b) to the police van and frisk him. PO Blake frisked § 87(2)(b) for weapons by patting down the outer parts of his clothing. PO Blake did not search § 87(2)(b)'s pockets. PO Blake placed § 87(2)(b) in the van without a physical struggle. PO Blake did say the § 87(2)(b) was cursing and making racial slurs at PO Blake. § 87(2)(b) said to PO Blake, "how much money do you think I could get from the lawsuit? I am going to sue the city. You think I am just another nigger. Are you Klan? Are your people Klan?" PO Blake ignored these comments. PO Blake secured § 87(2)(b) while the other officers searched the vehicle.

Sgt. Flanagan's CCRB Statement on September 14, 2004

Sgt. Flanagan stated that he was driving the police van, however Sgt. Flanagan is not sure what traffic laws § 87(2)(b) violated but knows he was stopped for a traffic violation. As Sgt. Pekera, PO Blake and PO McCaughey approached the vehicle, Sgt. Flanagan stayed in the police van to run § 87(2)(b).

§ 87(2)(b)'s license plate. As Sgt. Flanagan was sitting in the police van, he observed that § 87(2)(b) was outside of the vehicle and then observed § 87(2)(b) reenter the vehicle in the same manner as the other officers discussed. Sgt. Flanagan stated that Sgt. Pekera and PO McCaughey grabbed § 87(2)(b)'s hands and pulled him out of the car and put him against the car and frisked him. The struggle was under control before Sgt. Flanagan needed to assist. Sgt. Flanagan stated that he found an active warrant for § 87(2)(b) and that § 87(2)(b) was then handcuffed and arrested for the warrant. Sgt. Flanagan stated that he also conducted the search of the vehicle along with Sgt. Pekera and PO McCaughey. Sgt. Flanagan searched under all the seats and he is not sure if the trunk was searched. Sgt. Flanagan stated that he was sitting in the front driver's seat of the police van when § 87(2)(b) entered the van and stated that § 87(2)(b) was compliant. Sgt. Flanagan stated that § 87(2)(b) was cursing in the van and upset about the warrant.

Warrant Investigative Data

A warrant check revealed that § 87(2)(b) did have a warrant from § 87(2)(b), however on March 29, 2004 the warrant was cancelled.

Disposition of the Criminal Case

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b)

Roll Call

The Roll Call shows that Sgt. Pekera was supervising PO Blake, PO McCaughey and also PO McSweeney in the police van. However, no officers mentioned working with PO McSweeney in their interviews and Sgt. Flanagan was not listed on the roll call. § 87(2)(g)

CCRB History

Sgt. Pekera, Sgt. Flanagan and PO Blake do not have any substantiated CCRB allegations in their histories.

§ 87(2)(b)'s criminal conviction history

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Conclusions and Recommendations

Undisputed Facts

It is not in dispute that Sgt. Pekera stopped § 87(2)(b)'s vehicle. It is not in dispute that § 87(2)(b) was arrested on a warrant and charged with § 87(2)(a) 160.50. It is not in dispute that § 87(2)(b) was frisked and it is not in dispute that his vehicle was searched.

Disputed Facts

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Credibility Analysis

§ 87(2)(g) He stated that he picked up his friend, § 87(2)(b) before he was stopped. However he could not provide the correct phone number or an address for § 87(2)(b) § 87(2)(g) § 87(2)(b) denied that he was smoking a cigarette or using marijuana, however police documents

show evidence of an alleged marijuana cigarette recovered and vouched during the arrest. § 87(2)(b) § 87(2)(b) also stated that he had taken pictures of the damages done to his car however, he did not provide these photos until 9 months after the incident and could not provide a date of when the pictures were taken. § 87(2)(g)

§ 87(2)(b) It also took § 87(2)(b) § 87(2)(b) five months to cooperate with a photo presentation.

§ 87(2)(g) In his written statement he claimed that that same officer, who he described as heavyset, called him a gangster, pulled him out of the car, said, “shut the fuck up, it’s my car now” and smacked and punched § 87(2)(b) repeatedly. However, in his CCRB statement he stated that one officer pulled him out the car and said, “it’s my car now.” He did not allege that the officer stated, “shut the fuck up.” Then he claimed a different officer called him a “gangster” and that PO Blake smacked him. He alleged that an additional officer punched him. § 87(2)(b) stated during his CCRB statement that two of the unidentified officers, not PO Blake, searched him, however during the photo presentation he identified PO Blake as the officer who searched him. During the photo presentation he stated that one officer pulled him out of the car and called him a “gangster.” § 87(2)(g)

§ 87(2)(b) did not identify Sgt. Pekera as even being at the scene. § 87(2)(g)

All of the officers, except Sgt. Flanagan who stated he did not actually observe § 87(2)(b) § 87(2)(b) s driving, stated that § 87(2)(b) failed to signal during a left turn and observed that his windows may have been illegally tinted. This is also documented in PO McCaughey’s memo book. All of the officers, again except for Sgt. Flanagan who remained in the police van, stated that they smelled an odor of marijuana emanating from the vehicle when § 87(2)(b) rolled down his window. Sgt. Pekera, PO Blake and PO McCaughey all observed the alleged marijuana cigarette in the ashtray and agreed that it was PO McCaughey who actually removed that evidence. All officers agreed that the passenger in the vehicle was calm and compliant throughout the incident and that the car was released to him, which is also consistent with § 87(2)(b) s statement. All officers are consistent in that § 87(2)(b) § 87(2)(b) made an aggressive move to reenter his vehicle once Sgt. Pekera ordered him to exit his vehicle. This is also documented in all the police reports. § 87(2)(g)

Sgt. Pekera stated that PO Blake searched § 87(2)(b) however PO Blake stated that he only frisked § 87(2)(b) § 87(2)(g). Pekera observed the alleged narcotics and the aggressive move § 87(2)(b) made into his car § 87(2)(g). The officers agreed that § 87(2)(b) was acting agitated and angry that he was being arrested. They agreed that once he was cuffed he did not act out physically but he was verbally cursing.

Sgt. Pekera admitted to stopping the vehicle and searching the vehicle for narcotics and weapons. He admitted that he searched the entire inside of the vehicle and the trunk. He also admitted that force was used when he had to pull § 87(2)(b) out of the vehicle and put him against the vehicle to handcuff him, which is documented in the police reports. § 87(2)(g)

Determination of Fact

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(a) 160.50

Allegation A: Sgt. Pekera stopped § 87(2)(b)'s vehicle.

Kamin's Search and Seizure states that "an automobile stop is reasonable when an officer has probable cause to believe that an individual has violated the Vehicle and Traffic Law, a New York City Administrative Code or a local ordinance (pg. 381) [encl. 1a]. Sgt. Pekera observed § 87(2)(b) fail to use a turn signal and Sgt. Pekera believed that the windows were illegally tinted, which is corroborated by PO Blake and PO McCaughey, § 87(2)(g)

§ 87(2)(b), *Kamin's Search and Seizure* also notes that "if the police do not issue a summons for the violation it does not invalidate the stop. A traffic infraction can elevate reasonable suspicion of criminal activity to probable cause to arrest. It is clear that an officer may have a reasonable suspicion that a motorist committed a traffic violation while independently possessing a reasonable suspicion of criminal activity" (pg. 385-386) [encl. 1b-1c]. § 87(2)(g)

Allegation B: Sgt. Christopher Flanagan spoke obscenely and rudely to § 87(2)(b)

§ 87(2)(b) identified Sgt. Flanagan as the officer who called him and "gangster" and told him to "shut the fuck up" when the officers first approached the vehicle. However, according to all other accounts of the incident, Sgt. Flanagan did not even approach the vehicle initially because he stayed in the police van. § 87(2)(g)

Allegation C: Sgt. Gregory Pekera used physical force against § 87(2)(b)

§ 87(2)(g)

Allegation D: Sgt. Gregory Pekera authorized the search of § 87(2)(b)

Sgt. Pekera authorized PO Blake to search § 87(2)(b) § 87(2)(g)

§ 87(2)(b) Kamin's Search and Seizure states, "a search incident to a lawful arrest is justified by two exigent circumstances: (1) the safety of the arresting officer who must be permitted to search and seize weapons and (2) the preservation of evidence within the reach of the suspect" (pg. 349) [encl. 1d]. § 87(2)(g)

Allegation E: PO Kevin Blake searched § 87(2)(b)

Allegation F: PO Brian McCaughey searched § 87(2)(b)

§ 87(2)(b) alleged that PO Blake and PO McCaughey searched § 87(2)(b) after he exited the vehicle. § 87(2)(b) could not provide § 87(2)(b)'s contact information and the CCRB could not locate § 87(2)(b) § 87(2)(g)

Allegation G: PO Kevin Blake used physical force against § 87(2)(b)

Allegation H: An officer used physical force against § 87(2)(b)

§ 87(2)(b) alleged that PO Blake slapped him twice and that another officer, who he could not identify in the photo presentation, punched him in the stomach as he was entering the police van.

§ 87(2)(g)

Allegation I: Sgt. Pekera authorized the search of § 87(2)(b) **s vehicle.**

Kamins Search and Seizure states that “if an officers leans in the window to speak to a passenger of the vehicle and observes contraband, his conduct will constitute a search (pg. 438) [encl. 1e]. Kamins Search and Seizure also noted that “if an officer makes a valid stop of a vehicle and observes in plain view a quantity of drugs he would have probable cause to search the entire vehicle, including the trunk and any containers found in the vehicle” (pg. 444-445) [encl. 1f-1g]. Sgt. Pekera observed the alleged marijuana cigarette in § 87(2)(b) s vehicle, § 87(2)(g) Sgt. Pekera searched the inside of the vehicle and the trunk. Sgt. Pekera admitted to making the determination to search § 87(2)(b) s vehicle. He stated he was looking for narcotics and weapons after § 87(2)(b) made the furtive movement to reenter the vehicle once PO Blake attempted to remove the alleged marijuana and. § 87(2)(g)

Allegation J: Officer damaged that property that belonged to § 87(2)(b)

§ 87(2)(b) alleged that the officers damaged his vehicle by tearing the panels off, cutting the carpet, taking out the steering wheel column, destroying packages, tearing out his stereo system, breaking his power window controls, ripping out the backseat and cracking his bumper. The officers deny such damage § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: